Supreme Court, U.S.
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No. 99-377

IN THE

Supreme Court of the United States

JAMES DALE SMITH, personally and on behalf of all others similarly situated,

Petitioners,

v.

CITY OF FORT LAUDERDALE, FLORIDA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

The Petitioners appeal the Eleventh District Court of Appeals' decision affirming the District Court's granting of a summary judgment for the Respondent, City of Fort Lauderdale, on the Petitioners' First Amendment challenge to a City regulation prohibiting panhandling, begging or solicitation on a five-mile strip of the beach and two attendant sidewalks. The Eleventh Circuit Court of Appeals held that the challenged restrictions on speech were narrowly tailored to serve legitimate government interests, by providing a safe, pleasant environment and eliminating nuisance activity on the beach.

The controversy in this case began when the City of Fort Lauderdale enacted Rules and Regulations for City Parks and Beaches, intended to provide citizens with a safe environment in which recreational opportunity can be maximized. Pursuant to this purpose, the City included in its regulations Rule 7.5(c), which prescribed regulations to eliminate nuisance activity on the beach and provide patrons with a pleasant environment in which to recreate. The City's Rule 7.5(c) states simply, "Soliciting, begging or panhandling is prohibited."

The Petitioners challenged the Rule 7.5(c) application to a five-mile strip of beach; a new, one-and-one-half mile promenade sidewalk between that beach and State Road A-1-A; and the commercial area sidewalk on the opposite side of State Road A-1-A, collectively referred to by the Appellate court as the "Fort Lauderdale Beach area."

The Eleventh Circuit Court of Appeals held that the City of Fort Lauderdale Beach Rule prohibiting "soliciting, begging or panhandling" did not violate the First Amendment. The Court upheld Rule 7.5(c) as a reasonable time, place or manner restriction stating that:

> The City has made the discretionary determination that begging in this limited beach area adversely impacts tourism. Without second guessing that judgment, which lies well within the City's discretion, we cannot conclude that banning begging in this limited beach area burdens "substantially more speech than is necessary to further the government's legitimate interest." *One World Family Now*, 175 F.3d 1282 (11th Cir. 1999), quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 789 (1989). Rule 7.5(c)'s suppression of begging in the Fort Lauderdale Beach area is materially mitigated by the allowance of begging in streets, or sidewalks and in many other public fora throughout the City.

Pet. App. 5a.

REASONS FOR DENYING THE WRIT

The Petition should be denied. The rule is valid as a reasonable time, place and manner restriction. The First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired. *Heffron v. International Society for Krishna Consciousness*, 452 U.S. 640, 101 S. Ct. 2559, 69 L. Ed. 2d 298 (1981) at 2564; *citing Adderly v. Florida*, 385 U.S. 39, 47-48, 87 S. Ct. 760, 766, 97 L. Ed. 1105 (1953). It is well

settled that the government need not permit all forms of speech on property that it owns or controls. *International Society for Krishna Consciousness v. Lee*, 505 U.S. 672, 112 S. Ct. 2701 (1992). Rule 7.5(c) is not based upon the content or subject matter of the speech, since it applies evenhandedly to all persons or organizations whether commercial or charitable, that wish to solicit funds. Nor is it a rule open to arbitrary application, since it applies evenhandedly to all persons and entities, is applicable in only one unique area of the City and is inherently consistent with a valid time, place and manner regulation having no potential for becoming a means of suppressing a particular point of view.

The City's interests are several. The City's interest in maintaining a smooth pedestrian traffic flow at the beach, maintaining a safe and pleasant environment for both residents and tourists alike, as well as encouraging leisure and recreational activities free from accostation for solicitation of funds, are all sufficient to satisfy the requirement that the time, place and manner regulation secure a significant government interest. The City's interest in maintaining a safe and pleasant environment conducive to leisure and recreational activities is clearly a significant interest. The significance of that interest must be assessed in light of the characteristic nature and function of the particular forum involved. *Heffron v. International Society for Krishna Consciousness*, 452 U.S. 640, 101 S. Ct. 2559, 69 L. Ed. 2d 298 (1981). In the court below, the City's beach area was found to be a unique area. "As a general matter, it is clear that a state's interest in protecting the 'safety and convenience' of persons using a public forum is a valid governmental objective." *Smith v. City of Fort Lauderdale*, 177 F.3d 954 (11th Cir. 1999), *citing Heffron*, *id.* at 2565, citing *Grayned v. City of Rockford*, 408 U.S. 104, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972).

It is also well established that the activities of persons soliciting funds are subject to reasonable time, place and manner restrictions. *Heffron*, *id.* at 2564, citing *Grayned v. City of Rockford*, *id.* at 115. A major criteria for a valid time place and manner restriction is that the restriction may not be based upon either the content or subject matter of the speech. *Heffron*, *id.* at 2564, citing *Consolidated Edison Co. v. Public Service Commission*, 447 U.S. 530, 110 S. Ct. 2326, 65 L. Ed. 2d 319 (1980).

Even in a public forum, the government may enforce regulation of the times, places and manners of the expression, which: (1) are content neutral; (2) narrowly tailored to serve a significant government interest; and (3) leave open ample, alternative channels of communication. *Perry Education Assoc. v. Perry Local Educators Assoc.*, 460 U.S. 37, 103 S. Ct. 948, 74 L. Ed. 2d 794 (1983). *See also One World Family Now v. City of Miami Beach*, 175 F.3d 1282 (11th Cir. 1999). The rule challenged here, is narrowly tailored and serves a significant government interest. The Petitioners argue that the rule is not narrowly tailored toward a significant government interest because it covers all begging and panhandling and not just intrusive, threatening types of panhandling. However, the subjectivity involved in determining what conduct is "intrusive or threatening" would make any such limitations impossible to enforce.

Nonetheless, Rule 7.5(c)'s restrictions on begging in the Fort Lauderdale beach area are not rendered unconstitutional by the possible availability of less-speech-restrictive alternatives. Petitioners assert that the City's interest might be better served by proscribing only hostile or aggressive begging or by confining begging to specific parts of the beach. But Rule 7.5(c) need not be the "least restrictive or

least intrusive means" of serving the City's interest in order to qualify as "narrowly tailored." *Ward v. Rock Against Racism*, 491 U.S. 781 at 788-789 (1989). "So long as the means chosen are not substantially broader than necessary to achieve the government's interests . . . the regulation will not be invalid simply because a court concludes that the government's interest could be adequately served by some less-speech-restrictive alternative." *Id.* at 799. The Court below held that the Petitioner's proffered alternatives fall short of demonstrating that Rule 7.5(c)'s prohibition of begging in the Fort Lauderdale Beach area is "substantially broader than necessary."

The rule is sufficiently narrowly tailored and it serves a significant governmental interest. Based on the foregoing, it is the position of the Respondent, City of Fort Lauderdale, that the Petition should be denied.

Respectfully submitted,

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